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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

15-cr-643 (PKC)

-against-

ORDER

JASON GALANIS, et al.,

Defendants.
---x

CASTEL, U.S.D.J.

On May 17, 2016, this Court held a bail revocation hearing for defendant Jason Galanis pursuant to 18 U.S.C. § 3148(b). The Court concluded that the revocation of bail was appropriate and defendant was remanded to the custody of the United States Marshal for the Southern District of New York for detention pending trial. Defendant now requests that this Court stay its order of detention pending appeal. For the following reasons, defendant's request for a stay is denied.

BACKGROUND

On September 24, 2015, a nine-count indictment was unsealed charging defendant with securities, wire, and investment advisor fraud, as well as conspiracy to commit securities and wire fraud (the "Indictment"). (15-cr-643 (PKC), Dkt. No. 2.) The defendant was presented before Magistrate Judge Ronald L. Ellis on September 24, the day of his arrest. He was released pursuant to a $10 million recognizance bond secured by four financially responsible parties and property with equity value of $3 million. (15-cr-643 (PKC), Dkt. No. 92.) Defendant was also ordered to surrender his passport, restricted to travel within the Southern and Eastern Districts of

New York and Central and Northern Districts of California, and subjected to regular pretrial supervision. (Id.)

During the pendency of the case before the undersigned, defendant was arrested pursuant to a criminal complaint (the "Complaint") filed in the Southern District of New York. Briefly, he was charged with securities and investment advisor fraud, and conspiracy to commit the same. Defendant was presented before a Magistrate Judge in the Central District of California, who, on May 11, 2016, ordered that he be released on home detention and electronic monitoring.

The Office of the United States Attorney for the Southern District of New York wrote to the undersigned requesting a bail revocation hearing on the charges in the pending Indictment. (15-cr-643 (PKC), Dkt. No 178.) The government asserts, among other things, that the criminal activity charged in the Complaint occurred, in part, while defendant was on pretrial supervision on the Indictment.

Pursuant to 18 U.S.C. § 3148(b), the government may initiate a proceeding for bail revocation by filing a motion with the district court. A court must enter an order of revocation and detention if it finds that there is "probable cause to believe that the person has committed a Federal, State, or local crime while on release" and either "(A) based on the factors set forth in 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any person or the community; or (B) the person is unlikely to abide by any condition or combination of conditions of release." 18 U.S.C. § 3148(b)(1)(A), (b)(2)(A)-(B). Upon a finding of probable cause that defendant committed a federal, state, or local felony, "a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any person or the community."

THE BAIL REVOCATION AND HEARING

On May 17, 2016, the Court held a bail revocation hearing. The government argued that the sworn Complaint supported a finding of probable cause that defendant committed a federal felony while on release. The Complaint, sworn before Magistrate Judge Sarah Netburn by Agent Shannon Bieniek, avers that defendant committed securities and investment advisor frauds, and conspiracies to commit the same, that began in or about March 2014 and continued through in or about April 2016. (Complaint ¶¶ 1, 4, 5, 8.) While many of the allegations against defendant occurred prior to his pretrial release on the pending Indictment, the Complaint includes allegations that defendant continued his participating in the criminal conspiracy after his pretrial release. Specifically, the Complaint asserts that on February 17, defendant sent a letter (the "February 17 Letter") to individuals associated with the bond issuer, the Wakpamni Lake Community Corporation ("WLCC"), that included multiple false statements. (Complaint ¶ 63.) At the hearing, the government provided the February 17 Letter to the Court, and argued, consistent with the Complaint, that the false statements in the letter were intended to mislead the WLCC about the source of interest payments it was due under the bonds' indenture and related agreements, and dissuade them from taking action to uncover the alleged scheme. The sworn Complaint asserts that from August 27, 2014 to October 30, 2015, defendant diverted more than $8.75 million to pay for personal expenses. (Complaint ¶ 62.)

The government also urged that there was no combination of conditions that would assure that defendant would not pose a danger to the community. The government presented a selection of text messages to and from defendant which purported to show defendant threatened an individual who he believed was cooperating with the government. (Tr. 9-10.)[1] In addition, the government alleged that defendant began using the email address "legal@colarisventures.com" after he was placed on pretrial supervision in the matter before this Court on September 24, 2015. (Tr. 12-13.) The government argued that defendant's use of this email address was evidence of his attempt to conceal his activity, which is relevant in determining that no conditions of release would protect the community from defendant's conduct. (Tr. 14.)

In response, defendant asserted, among other things, that the government failed to demonstrate that probable cause existed showing defendant committed a crime while on pretrial release. Defendant was also given an opportunity to call witnesses. (Tr. 38 ("The Court: This is your opportunity. You can call your witnesses right now. . . . Call whoever you would like.").) Defendant's counsel consulted with co-counsel, as well as with defendant:

> [Defense Counsel]: And I would like to think for a few minutes about whether to call any witness. Thank you.
>
> [Government]: May I respond briefly, your Honor?
>
> The Court: Not until I hear from counsel.
>
> [Defense Counsel]: May I consult one minute without wasting your time?
>
> The Court: Of course.
>
> (Counsel confers with defendant)
>
> [Defense Counsel]: Thank you for being patient your Honor. We really appreciate it.

(Tr. 40-41.) Ultimately, defendant requested that a witness be produced who could testify to text messages sent and received by defendant only "if the Court is inclined to take into account at all

[1] Citations to "(Tr.___.)" refer to the bail revocation hearing transcript from May 17, 2016.

these texts." (Tr. 41.) Other than that one witness, when asked whether there was "[a]nybody else you want to call," defendant's counsel responded, "No your Honor. Thank you." (Tr. 42.)

Based on the evidence presented at the hearing, the Court concluded that there was probable cause that defendant committed a crime while on pretrial release. (Tr. 46.) The Court found that the February 17 Letter included several misstatements, the intent of which were to "dissuade the recipient from taking any action that would uncover or cast further attention upon the scheme." (Tr. 47.) The statements in the February 17 Letter were made by defendant during and in furtherance of the charged conspiracy.

The Court also concluded that defendant was unlikely to abide by any condition or combination of conditions of release. Relying on the "totality of circumstances," the Court took into account "that the indicted offenses for which there will be a trial this September, at least according to the grand jury and its finding of probable cause, were committed while [defendant] was on probation following a conviction of a crime." (Tr. 47-48.) This conviction was based on conduct charged in the United States District Court for the Central District of California for which defendant received a sentence of five-years' probation. The Court also found that there are "no combination of conditions which protects the public from further conduct by [defendant]." (Tr. 48.) Specifically, the Court found that it "is a danger to have someone committing the crime of conspiracy to commit securities fraud while on release."[2] (Tr. 48.)

[2] At the hearing, the Court found that defendant's detention was appropriate based on a finding of probable cause, that defendant was unlikely to abide by any condition or combination of conditions of release, and that there was no condition or combination of conditions that would assure that defendant would not flee or pose a danger to the safety of any person or the community. However, the Court expressed the finding of probable cause and the other findings as alternative bases for the revocation of bail. As clarified by this Order, the Court concludes that defendant's detention was supported by a finding of probable cause pursuant to 18 U.S.C. § 3148(b)(1)(A), and further that there are no conditions or combinations of conditions of release that would assure that defendant will not pose a danger to the safety of any other person or the community. 18 U.S.C. § 3148(b)(2)(A). The same evidence also supports a

DISCUSSION

Defendant argues that the Court's order revoking his bail should be stayed pending appeal for several reasons. He contends that a stay is appropriate because the government failed to show "probable cause that the offenses in the [Complaint] occurred, even in part, while [defendant] was on pretrial release." (Letter from Marion Bachrach, dated May 27, 2016, at 3.) Even if probable cause exists, defendant contends that there are conditions short of detention that would assure the safety of the community during a stay pending appeal. He also contends that the government improperly prevented him from rebutting the presumption in the government's favor.

With respect to probable cause, defendant argues that the Court's probable cause finding was erroneous because the alleged conspiracy to commit securities fraud was complete prior to September 24, 2015, the date that defendant was placed on pretrial release. Because the conspiracy was complete prior to defendant's release, he did not commit that crime "while on release" as required by 18 U.S.C. § 3148(b)(1)(A). Although defendant sent the February 17 Letter after his pretrial release, he argues that just sending the letter does not "constitute an act in furtherance of the conspiracy." (Letter from Marion Bachrach, dated May 27, 2016, at 3.) Relying on Grunewald v. United States, 353 U.S. 391 (1957), defendant argues that the central purpose of the alleged conspiracy was completed prior to defendant's pretrial release, and steps to conceal or cover-up the conspiracy do not constitute an extension of the conspiracy. However, Grunewald makes clear that "[b]y no means does this mean that acts of concealment can never have significance in furthering a criminal conspiracy." Id. at 405. Instead, Grunewald held that "a vital distinction must be made between acts of concealment done in furtherance of

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finding that defendant is unlikely to abide by any condition or combination of conditions of release. 18 U.S.C. § 3148(b)(2)(B).

the main criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." Id.

Here, the government presented evidence which supports a finding of probable cause to believe that defendant continued the conspiracy alleged in the Complaint, at least in part, while on release. Although the misrepresentations in the February 17 Letter served to conceal defendant's criminal conduct, the concealment was completed to further the main criminal objectives of the conspiracy. While the issuance of Tribal bonds at the heart of the Complaint occurred from August 2014 to April 2015, the WLCC had continuing rights and obligations under the indenture and related agreements. Indeed, one of the alleged misrepresentations made by defendant in the February 17 Letter relates directly to those ongoing rights and obligations. Defendant represented that the WLCC bond interest was paid "as contemplated in the Indenture and related agreements." However, the government proffered that "it has evidence that those interest payments were paid by transfers from codefendant [Devon] Archer and proceeds from an IPO offering." (Tr. 46-47.) Contrary to defendant's assertion, therefore, the conspiracy necessarily continued after the issuances of the bonds and extended to improper distributions to the bond issuer, which constituted necessary acts to perpetuate and continue the conspiracy. United States v. Spero, 331 F.3d 57, 60 (2d Cir. 2003) ("[W]here a conspiracy contemplates a continuity of purpose and a continued performance of acts, it *is presumed to exist* until there has been an affirmative showing that it has been terminated[,] and its members continue to be conspirators until there has been an affirmative showing that they have withdrawn." (quoting United States v. Mayes, 512 F.2d 637, 642 (6th Cir. 1975)). The Complaint details at least three separate instances of defendant and his coconspirators making interest payments derived from improper sources. (Complaint ¶¶ 53, 58.) Therefore, the

February 17 Letter amounts to more than just an attempt by defendant to conceal a completed conspiracy; rather, it represents an act during and in furtherance of an ongoing conspiracy, including fraud and deception of the bond issuer in the face of ongoing obligations under the indenture and related agreements.

Defendant also argues that there are conditions short of detention that "could assure the safety of the community during a stay pending appeal." (Letter from Marion Bachrach, dated May 27, 2016, at 4.) Having found that there is probable cause that defendant committed a crime while on release, however, "a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community." 18 U.S.C. § 3148. The Court finds no evidence that rebuts the presumption. Defendant reiterates its argument that an order not to engage in business transactions on behalf of clients or customers while on pretrial release would be sufficient to ensure the community's safety. However, despite previous court orders not to commit additional crimes, there is probable cause that defendant committed multiple financial crimes both while on probation and then separately while on pretrial release on the pending Indictment. Moreover, at the bail stage, the sworn Complaint and the grand jury's Indictment show that defendant has a history of committing financial crimes by concealing his identity or with the aid of third parties, including family members. Accordingly, defendant can easily evade an order not to engage in business transactions by, for example, having others carry out his orders. Based on the foregoing considerations, the Court concludes that no combination of conditions would be adequate to protect the community from defendant's actions.

Defendant separately contends that the government "improperly sought to prevent rebuttal of the presumption on which it relied." (Letter from Marion Bachrach, dated May 27, 2016, at 8.) However, as indicated above, defendant was given an opportunity to call witnesses. While he requested to call a witness to testify regarding certain text messages sent and received by defendant, he only requested to do so "if the Court is inclined to take into account at all these texts." (Tr. 41.) However, as evidenced by omitting any reference to them in its findings of fact at the hearing, the Court did not consider the text messages in ordering defendant's bail revoked. Defendant has otherwise waived his right to call other witnesses and cannot now reasonably assert that the government precluded him from doing so.

Defendant also argues that the Court erroneously considered previously-known information when it determined that he was unlikely to abide by any conditions or combination of conditions of release pursuant to 18 U.S.C. § 3148(b)(2)(B). (Letter from Marion Bachrach, dated May 27, 2016, at 3.) Specifically, the Court considered the fact that a grand jury charged defendant pursuant to the Indictment with securities, investment advisor, and wire fraud from 2007 through 2011, a period during which defendant was out probation from the Central District of California conviction. However, nothing in 18 U.S.C. § 3148(b)(2)(B) suggests that the Court may not take into account all relevant circumstances, including facts previously considered, when determining whether an individual is unlikely to abide by any conditions or combination of conditions of release.

Last, defendant contends that a stay is appropriate "because of the disparity of treatment regarding Jason Galanis in comparison to similarly situated co-defendants." (Letter from Marion Bachrach, dated May 27, 2016, at 3.) However, defendant cites to no authority to suggest that all codefendants must be treated equally. Quite the opposite, 18 U.S.C. § 3148 requires the Court to make particularized findings with respect to the individual defendant before it. Suffice to say, the reasons for not remanding his father and codefendant, John Galanis, are unique to him, and are not related to the reasons that defendant's bail was revoked. The Court has made particularized findings which support defendant's bail revocation, and that is sufficient to support this Court's Order, regardless of its decision on other defendants in the matter.

CONCLUSION

For the foregoing reasons, defendant's application for a stay is DENIED. In addition, defendant's application to file its letter motion under seal is GRANTED in part. Defendant shall file a redacted version of the letter on the docket by June 3, 2016.

SO ORDERED.

P. Kevin Castel
United States District Judge

Dated: New York, New York
June 1, 2016